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682 177 on the authority of a trader who had been in the Creek country 15 years, that the murderer was publicly executed and the law of private retaliation had gradually become obsolete.[33] And, about 20 years later, Eakins says:

"Among the Creeks, now, however, the murderer undergoes a regular trial before some of the leading chiefs of the nation, and is dealt with according to their decision. If an Indian should murder a [563] negro, the law is satisfied with the value of the negro being paid to the owner. The intervention of time and the fleeing of the murderer, generally allay resentment and lead to compromises. After the annual "busk," all offences are cancelled.[34] There is no distinction made in the estimate of life between the male and female."[35]

696 The administration of justice was, however, far from being Europeanized. Thus Gregg contradicts Eakins in part when he tells us that—

"They have no trial by jury, and their judicial proceedings are exceedingly summary—frequently without witnesses; for the warriors are generally too proud to deny a charge, lest it be construed into cowardice. Executions sometimes take place within an hour after the commencement of trial. Murder, rape, and a third conviction of stealing are punished with death, usually by shooting; but, in case of homicide, if claimed by the relatives of the deceased, the criminal is executed with the same kind of weapon, or, if possible, the very same, with which he committed the murder."[36]

And he adds:

"Notwithstanding the severity of these laws, they are for the most part rigorously enforced; though a commutation satisfactory to the aggrieved is still permitted to release the offender. Their laws, in cases of accidental homicide, are still more barbariously rigid than those of the other nations."[37]

•681 The information which I have myself obtained corroborates in all particulars that furnished by these earlier writers. The peculiar function of the White towns in protecting escaped criminals seems, however, to have well-nigh disappeared even before the migration to Oklahoma, as my oldest informants knew nothing about it. Jackson Lewis merely stated that a man who had committed an offense in one town frequently fled to another and kept out of sight as much as possible until a considerable period had elapsed. Then the chief of the town where he had sought refuge would say to the chief of the other town: "I have made a townsman of this friend of yours and I

[33] Hodgson, Journey through N. A., p. 267.

[34] This agrees with the statement of one of Speck's informants (Mem. Am. Anth. Assn., vol. II, p. 115), but anciently murder was one crime excepted from the general amnesty.

[35] Schoolcraft, Ind. Tribes, vol. I, p. 277.

[36] Gregg, Commerce of the Prairies, in Early Western Travels, vol. 20, p. 315.

[37] Ibid., pp. 315-316.

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desire him to be made free." Frequently this was done and he suffered no punishment. 681

Among the Alabama retaliation for murder rested, as among the Creeks, with the clan of the victim. Upon one occasion, after this tribe had removed to Louisiana and Texas, one of the Louisiana Alabama killed another and fled to Texas. Sometime afterward he suddenly appeared among the people he had left while a dance was going on. The men belonging to the clan of the murdered man then got their guns, came to the place, and killed him. He on his part crouched by the fire and made no attempt to escape. Evidently he had decided deliberately that death was better than banishment. 628 682 614

There is no instance recorded of an old person being killed to save his family the trouble of supporting him, and Bartram is insistent that such cases occurred rarely, and only at the earnest request of the victim.[38] Bossu says that "the old people who can not follow during a retreat ask to be killed with blows of clubs, as well to spare them the grief of decrepitude as for fear lest they fall into the hands of their enemies, and be burned or eaten,"[39] but he is careful to explain that death was inflicted upon the aged only from motives of humanity. Says Romans: "They revere old age to excess," but he adds, "in extreme sickness they will out of compassion break the neck of the decrepit or lingering patient."[39a] 888

Infanticide was practiced under certain circumstances, as the following from Swan shows: 847

"If a young woman becomes pregnant by a fellow whom she had expected to marry, and is disappointed, in revenge, she is authorized by a custom of the country, to destroy the infant at the birth, if she pleases, which is often done, by leaving it to perish in the swamp where it was born, or throwing it into the water. And, indeed, to destroy a new-born infant is not uncommon in families that are grown so numerous as to be supported with difficulty; it is done by mutual consent of the clan and parents, and without remorse."[40]

This is supported by Milfort:

"In this nation the children all belong to the mother, who has the right of life and death over the one to whom she has just given birth, during the first month following her confinement. This time having expired, if she should kill it she would herself be punished with death."[41]

Witchcraft was often given as the reason for killing a certain person, but it must be remembered that the person was not destroyed 754 683

[38] Bartram, Travels, p. 497.
[39] Bossu, Nouv. Voy., vol. II, pp. 25-28.
[39a] Nat. Hist. E. and W. Fla., p. 86.
[40] Swan, in Schoolcraft, Ind. Tribes, vol. V, p. 272.
[41] Milfort, Mém., p. 291.

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the Tukabahchee chief said to Hitchcock: "When we order out the people to make a public fence, if they don't turn out, we send and take away their gun, or horse, or something else to punish them." [72]

Adair tells us that neglect of the regular morning plunge into running water was deemed a heinous crime and was punished by dry scratching. [72a]

Mention has been made above of the device resorted to by McGillivray in order to bring recalcitrant towns to order.

"When the inhabitants of any particular town are notorious for horse-stealing, or have acted otherwise unadvisedly, the chief has the entire power of punishing them collectively by removing the white man from among them, and depriving them of trade. This at once humbles them most effectually; for they conceive the privilege of having a good white trader in their town, to be inestimable." [73]

After the removal of the Indians to Oklahoma I am told that the following was the usual procedure in cases of theft. A council of the people or clans in the neighborhood was held and the matter was reported to the chief of the Creek Nation who then sent light-horsemen after the culprits, although sometimes he left the apprehension of them to the people living in the neighborhood. When these had been brought to trial and convicted they were usually lashed, and the lashing was by no means a light matter, according to those who have observed it, the blows raising huge welts on the flesh and death not infrequently ensuing. Debts of licensed traders were sometimes brought before the national council for adjudication. [74]

Escaped murderers and adulterers, and those who had committed lesser offenses and had withdrawn from their people to avoid the ridicule and contempt of their fellow townsmen, formed a class from which, says Bartram, generally came the ruffians who committed depredations and murders on the frontiers. [75] The foundation of new towns may sometimes be traced to them, as indeed is frankly admitted by members of those towns themselves. It is said that the town of Wiwohka had such an origin, and it is also claimed for others like Hilibi on less satisfactory grounds. In later times many such people swelled the population of the Florida Seminole.

Adair is the only writer to say anything about oaths used in adjuring a witness to give true evidence, and in this connection he does not mention the Creeks, only the Cherokee, Chickasaw, and Choctaw. The Chickasaw and Choctaw oath he gives as *Chiklooska ke-e-u Chua*, [76] which he interprets "Do not you lie? Do you not, of a certain

[72] Hitchcock, Ms. notes.

[72a] Adair, Hist. Am. Inds., p 130; see p. 168.

[73] Swan in Schoolcraft, Ind. Tribes, vol. v, pp. 281-282.

[74] Schoolcraft, Ind. Tribes, vol. i, p. 277.

[75] Bartram, Travels, p. 513.

[76] *Lookke* is a Chickasaw word meaning "to lie"; *chiklookke* signifies "you do not lie"; *ke-e-u* (or *keyu*) is the negative. The form used here is a strengthened one.